11-836

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 251.

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, APPELLANT,

vs.

SAMUEL H. TURRILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 9, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 251.

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INDEX.

	Original.	Print.
Mandate of Supreme Court United States	2	1
Decree	5	2
Appeal bond	6	3
Clerk's certificate	10	4

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the judges thereof, on Monday, the ninth day of July, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the one hundred and second year.

WILLIAM H. BRADLEY,
Clerk.

SAMUEL H. TURRILL
vs.
THE CHICAGO, BURLINGTON AND QUINCY Railroad Company. } In chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the ninth day of July, A. D. 1877, came the said complainant, by his solicitor, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, the mandate of the Supreme Court of the United States in said entitled cause, which said mandate is in the words and figures following, to wit:

2 *Mandate of the Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the northern district of Illinois, greeting: [SEAL.]

Whereas lately in the circuit court of the United States for the northern district of Illinois, before you or some of you, in a cause between Samuel H. Turrill, complainant, and The Chicago, Burlington and Quincy Railroad Company and Amos T. Hall, defendants, wherein the decree of the said circuit court entered in said cause on the 16th day of July, A. D. 1874, is in the following words, viz:

"And now at this day, the court being sufficiently advised upon the exceptions heretofore filed on the part of the complainant as well as of the defendants, sustains all exceptions of the defendants to the master's report which object to the amount of profits and the measure thereof made by the defendants by the use of the complainant's machine; and also sustains all the exceptions of the defendants to the master's report which object to the proportion allowed by the master of cut rails out of the number of mended rails; and also sustains all exceptions of
3 the defendants which object to the allowance by the master of profits for the use of the complainant's machine by the defendants before the complainant had title to the patent or any part or interest therein; and as to all other exceptions of the defendants to the master's report the court overrules the same, and the court overrules the exceptions of the complainant to the master's report, and the court being of opinion that the case should not be again referred back to the master, but that the court should find the amount of profits which the defendants have respectively made by the use of the complainant's machine, doth find the same to be the sum of thirty-four thousand five hundred and ninety four dollars and eighty-three cents. It is thereupon ordered and decreed that the said defendant The Chicago, Burlington and Quincy

Railroad Company, pay to the said complainant the sum of thirty-four thousand five hundred and ninety-four dollars and eighty-three cents so as aforesaid found, within thirty days from the date of this decree; and in default thereof that execution issue therefor.

"And it is further ordered, that said Chicago, Burlington and Quincy Railroad Company pay all the costs to be taxed herein.

"And it is further ordered, that the said Chicago, Burlington and Quincy Railroad Company, its servants and agents, be perpetually enjoined and restrained from making or using any machine for re-
4 pairing railroad bars embracing the improvement or any substantial part thereof for which letters patent were issued to Joseph D. Cawood.

"And it is further ordered, that this suit be dismissed as against the defendant Amos T. Hall;"

as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by the Chicago, Burlington and Quincy Railroad Company agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and seventy-six, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel: On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs and interest until paid at the same rate per annum that similar decrees bear in the courts of the State of Illinois, and that the said complainant Samuel H. Turrill recover against the said defendant three hun-
5 dred and forty-nine dollars and thirty-two cents for his costs herein expended, and have execution therefor.

23d April, 1877.

You therefore are hereby commanded that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the tenth day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

Costs of complainant, taxed by D. W. Middleton, clerk of the Supreme Court of the United States: Clerk, $329.32; attorney, $20.00—$349.32.

(Endorsed:) Filed July 9, 1877. Wm. H. Bradley, clerk.

And on the same day, to wit, the 9th day of July, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before the Hon. Thomas Drummond, judge, is the following entry, to wit:

SAMUEL H. TURRILL
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILroad Company. } In chancery.

6 The mandate having been filed, showing that the decree in this cause has been affirmed in the Supreme Court of the United States, it is ordered that the complainant have execution thereon in

conformity with the usage and practice of this court, together with the costs in this court and those of the Supreme Court, the court being of opinion that under the law of this State and under the mandate of the Supreme Court in this case the complainant is entitled to interest on this decree from the date thereof.

The defendant, excepting to the opinion of the court, prays an appeal from the decree last aforesaid, which is allowed upon defendant filing bond of $70,000.00, to be approved by the court.

Afterwards, to wit, on the 16th day of July, A. D. 1877, the said defendant, by its solicitor, filed in said clerk's office its bond in appeal in said entitled cause; which said bond is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents that we, The Chicago, Burlington and Quincy Railroad Company and Robert Harris, J. M. Walker, are held and firmly bound unto Samuel H. Turrill in the full and just sum of seventy thousand dollars, to be paid to the said Samuel H.
7 Turrill, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators jointly and severally by these presents. In witness whereof the said The Chicago, Burlington and Quincy Railroad Company has caused these presents to be signed by its president and its corporate seal to be hereto affixed, and the said Robert Harris have hereto set their hands and seals this sixteenth day of July, A. D. 1877.

Whereas on the sixteenth day of July, A. D. 1874, at a term of the United States circuit court for the northern district of Illinois, in a suit depending in said court, on the chancery side thereof, between the said Samuel H. Turrill, complainant, and the said Chicago, Burlington and Quincy Railroad Company and Amos T. Hall, defendants, a decree was entered against the said Chicago, Burlington and Quincy Railroad Company for the sum of thirty-four thousand five hundred and ninety-four dollars and eighty-three cents and costs;

And whereas the above bounded The Chicago, Burlington and Quincy Railroad Company afterwards took an appeal to the United States
8 Supreme Court to reverse said decree, on which appeal said decree was affirmed and a mandate issued from the Supreme Court to the circuit court to execute said decree; and whereas an order or decree was afterwards entered in the said circuit court that said complainant have execution for said sum of thirty-four thousand five hundred and ninety-four dollars and eighty-three cents, with costs and interest from the date thereof, to wit, from the said sixteenth day of July, A. D. 1874; and whereas the said The Chicago, Burlington and Quincy Railroad Company has taken an appeal to the Supreme Court of the United States to reverse said last-named decree:

Now, therefore, the condition of this obligation is such that if the above-named The Chicago, Burlington and Quincy Railroad Company shall prosecute its said appeal to effect, and answer all damages and

costs if it shall fail to make its appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

CHICAGO, BURLINGTON AND QUINCY
RAILROAD COMPANY,
[SEAL.] By ROBERT HARRIS, *President.*

ROBERT HARRIS. [SEAL.]
J. M. WALKER. [SEAL.]
A. T. HALL. [SEAL.]

Attest:

A. T. HALL,
Secretary.

9 Approved:

THOMAS DRUMMOND.

(Endorsed:) Filed July 16th, 1877. Wm. H. Bradley, clerk.

10 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of all the record and proceedings had in said court in the cause wherein Samuel H. Turrill is the complainant and the Chicago, Burlington and Quincy Railroad Company is the defendant, from and including the filing of the mandate of the Supreme Court of the United States, and all proceedings subsequent thereto, as appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 18th day of September, A. D. 1877, and of our Independence the 102d year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsement on cover:) No. 251. The Chicago, Burlington and Quincy Railroad Company, appellant, vs. Samuel H. Turrill. N. Illinois C. C. U. S. Filed 9th October, 1877.

OFFICE SUPREME COURT U. S.
FILED
MAR 11 1880
D. W. MIDDLETON, Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1879.

THE CHICAGO & ALTON RAILROAD COMPANY,
Appellant,
v.
SAMUEL H. TURRILL,
Appellee.

AND

THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
Appellant,
v.
SAMUEL H. TURRILL,
Appellee.

BRIEF FOR APPELLANTS.

GEORGE PAYSON, OF COUNSEL.

CHICAGO:
BEACH, BARNARD & CO., LEGAL PRINTERS, 104 RANDOLPH STREET.
1880.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1879.

THE CHICAGO & ALTON RAILROAD COMPANY,
Appellant,
v.
SAMUEL H. TURRILL,
Appellee.

AND

THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
Appellant,
v.
SAMUEL H. TURRILL,
Appellee.

STATEMENT OF THE CASE.

These are two of the Swage Block cases which were before this Court in 1877, and are here now on a second appeal.

On the 16th day of July, 1874, the Circuit Court of the United States for the Northern District of Illinois decreed in the first of these cases that the appellant pay to appellee $36,226.38, as the amount of profits made by said appellant by the use of the appellee's machine. From that decree the appellant took an appeal to this court, which was heard at the October term, 1876.

On the 23d day of April, 1877, this Court affirmed the decree of the court below, with costs, and interest until paid, at the

same rate per annum that similar decrees bear in the courts of the State of Illinois; and July 9th, 1877, the said Circuit Court entered the following decree:

"The mandate having been filed, showing that the decree in this cause has been affirmed in the Supreme Court of the United States, it is ordered that the complainant have execution thereon in conformity with the usage and practice of this Court, together with the costs in this Court, and those of the Supreme Court; the court being of the opinion that under the mandate of the Supreme Court in this case, the complainant is entitled to interest on this decree from the date thereof."

To this opinion the defendant excepted, and prayed an appeal to this Court; which was allowed upon filing a bond in the sum of $70,000, to be approved by the court.

The same proceedings in all respects were had in the case of the Chicago, Burlington & Quincy Railroad Company, except only as to the amount of the decree, which in that case was for $34,594.83; and the two cases being thus alike, it will be more convenient to argue them both together. In each case it should be noted, the interest exceeded $5,000.00.

The only QUESTION INVOLVED is whether decrees similar to those entered in the above causes bear interest in the courts of Illinois? And this again may conveniently be divided into two: *First*, whether *any* decrees bear interest in those courts? And, *second*, if any decrees do bear interest, whether they can be said to be similar to those now before the court?

Assignment of Errors.

On behalf of the Chicago & Alton Railroad Company the following errors are assigned:

First. The court erred in finding that decrees bear interest in the courts of Illinois.

Second. If any decrees do bear interest in those courts, the court erred in finding that the decrees here in question are of a similar character.

And on the behalf of The Chicago, Burlington & Quincy Railroad Company, the same errors are assigned as those above stated.

Brief of the Argument.

I.

Do any decrees bear interest in the courts of Illinois?

The appellants insist that they do not. For first it is well settled that neither judgments nor decrees bear interest at common law, or without express legislation to that effect.

Perkins v. *Fourniquet*, 14 How., 331.
Trenholm v. *Bumpfield*, 3 Rich., 376.
St. Paul's Church v. *Washington*, *Ib.*, 380.
Hamer v. *Kirkwood*, 25 Miss., 95.
Barnes v. *Crandall*, 12 La. An., 112.

Secondly. There is no law in Illinois giving interest on decrees in chancery. The Illinois Statute on Interest, in force at the time when these decrees were affirmed by this Court, reads as follows:

"Judgment recovered before any court or magistrate shall draw interest at the rate of six per centum per annum from the date of the same until satisfied. When judgment is entered upon any award, report, or verdict, interest shall be computed at the rate aforesaid from the time when made or rendered to the time of rendering judgment upon the same, and made a part of the judgment." (Rev. Stat. of Ills. of 1874, Chap. 74, entitled Interest, p. 614, section 3.)

And again: "Every execution issued upon a judgment shall direct the collection of interest thereon from the date of the recovery of the judgment until the same is paid, at the rate of six per centum per annum." (Rev. Stat. of Ills. 1874, Chap. 77, entitled Judgments, Decrees, and Executions, p. 622, Section 7.)

By these two sections, interest is allowed on *judgments* only, and neither here nor anywhere else in the Statutes of Illinois is there any provision for interest on *decrees*. It may be urged that "judgment" here includes "decree," but we have the best of authority the other way. In the case of *Perkins* v. *Fourniquet*, 14 How., 328, this Court have construed a similar act of Congress, and decided that decrees are not included in the word "judgment."

The act in question is that of August 23, 1842; 5th U. S. Statutes, 393; Brightley's Dig., I, 449, Section 2. It provided that:

"On all judgments in civil cases, hereafter recovered in the Circuit or District Courts of the United States, interest shall be allowed and may be levied by the marshal in all cases where, by the law of the State in which said Court shall be held, interest may be levied under process of execution on judgments recovered in the courts of such State; to be calculated from the date of the judgment, and *at such rate per annum as is allowed by law on judgments recovered in the courts of such State.*"

This act is in the broadest terms, and would certainly include decrees, if decrees could ever be included under the term "judgment." Yet this Court says in regard to it, (on p. 331):

"The difficulty in that court seems to have arisen from supposing that the act of 1842 applied to judgments and decrees in this Court. And this, we presume, occasioned the error it committed in the construction and execution of the decree and mandate in question.

"The act of 1842 does not embrace *cases in equity*, nor does it extend to either judgments or decrees in this Court. It is confined in plain terms to *judgments at law* in the Circuit and District Courts. It places the judgments of these courts, in respect to interest, upon the same footing with the judgments of the State Court. And where, by the law of the State the judgment of a court carries a certain interest until paid, the former rule and the same rate of interest is to be allowed in the Circuit and District Courts of the United States. And the marshal is directed to levy it on process of execution wherever it can be levied on a judgment in the State Court. In such cases the judgment bears interest by force of the law, although upon the face of it it may not purport to carry interest. *Upon common law principles a judgment does not carry interest.* It is true that damages may be recovered for the detention of the debt in an action on the judgment. But previous to the act of 1842, neither interest nor damages for the detention of the debt could have been levied, under process of execution, upon the judgment of a Circuit or District Court of the United States."

And again, on p. 332, the court says:

"Indeed, in the New York case the claim for interest stood on stronger ground than in the present, *for that was an action at law.* The act of 1842, therefore, applied to the judgment in the

Circuit Court, and it would have carried the State interest until paid, if it had not been brought here by writ of error. *But this is a decree in chancery, and not embraced in the act of 1842; and, according to the settled chancery practice, no interest* or damages could have been levied under process of execution upon the amount ascertained to be due and decreed to be paid, if there had been no appeal; 2 Ves., 157, 168, n. 1, Sumn. ed.; 2 Dan. Chan. Plead. and Prac., 1,442, 1,437, 1,438. Nor could any damages or interest have been given on its affirmance here, but for the discretionary power vested in this Court by the act of 1789."

Here we have the precise point determined by the highest tribunal in the land, and on full consideration.

After that no other authority should be needed, but we beg also to refer the court to the case of *Doak* v. *Ridley*, 2 Yerg., 495, where the construction of a similar statute was in question.

The court there say:

" It would be violating language applicable to proceedings in chancery to hold that a statute giving interest on judgments applied to chancery; inasmuch as it makes the term *judgment* synonymous with *decree*. It has been the policy of the courts to keep the terms distinct; and we must infer that the Legislature not only knew what was the proper term to use, but used it in accordance with the understanding of the courts."

And so in *Commonwealth* v. *Peters*, 5 Bush., 221, the court held that decrees bear interest as well as judgments, simply by virtue of the express statutory provision to that effect, thus clearly recognizing the distinction here insisted on.

That " judgment," as used in the Illinois statutes, does not include " decree," is still farther manifest from other provisions of those statutes.

Thus, in Chapter 77 on Judgments, p. 622, Sec. 7, it is enacted that " every execution issued on a *judgment* shall direct the collection of interest thereon," &c.

And in Sec. 1, it is provided " that a *judgment* of a court of record shall be a lien," &c.

Now, if the word "judgment" meant "decree," in the chapter on Interest, there would be the same reason for claiming that it meant "decree" here. But in chapter 22 on Chancery, p. 203, Sec. 44, it is said that "a decree for money shall be a "lien on the lands, &c., to the same extent and under the same "limitations as a judgment at law."

If it was necessary to add this provision to the chancery act, in order to make the decree a lien, it was just as necessary to add a similar provision to the chapter on Interest, in order to make decrees bear interest; and as the Legislature has seen fit to do one and not the other, the presumption, as in all such cases, is that the omission was intentional.

So in chapter 37 on Courts, page 332, Sec. 43, it is enacted that: "The several Circuit Courts in this State, and the Superior Court of Cook County, may make and award such *judgments*, *decrees*, orders and injunctions," &c.

And so in Sec. 47:

"When a cause or matter is taken under advisement by a judge of a circuit court, and the cause or matter is decided in vacation, the *judgment*, *decree* or order therein may be entered of record in vacation; but such *judgment*, *decree* or order may, for good cause shown, be set aside," &c.

And the same words are again repeated in Sec. 48.

Again, in chapter 77 on Judgments, the same care is shown to distinguish between the two words, with what might otherwise seem wearisome and needless repetition.

The words "judgment or decree," "decree or judgment creditors," are always used whenever both are meant to be included; while, on the other hand, only the word "judgment" is used whenever proceedings at law alone are intended.

See Sections 16, 19, 20, 24, 26, 37, 38 and 39.

"When any real estate is sold by virtue of an execution, *judgment or decree* of foreclosure," the officer is to have a certificate, &c. (Sect. 16, p. 623.)

"In all cases of redemption of land from sale had under any execution, *judgment*, order or *decree*, it shall be the duty of the

purchaser, " &c., to make out an instrument in writing evidencing such redemption, &c. (Sect. 19, p. 623.)

" If such redemption is not made, any *decree or judgment* creditor," &c., may redeem, &c. (Sect. 20.)

" When there are several *decree or judgment* creditors, the creditor having the senior *judgment or decree* shall have the preference to redeem, &c; but where two or more *judgments or decrees* bear equal date, the creditor first paying the redemption money shall have preference." (Sect. 24.)

" Any joint owner, &c., or a *decree or judgment* creditor of such joint owner, may redeem," &c. (Sect. 26.)

" The collection of a *judgment or decree* of a court of record shall not be delayed or hindered, or the lien created by law abate, by reason of the death of any person in whose favor such *judgment or decree* shall lie." (Sect. 37.)

" When it is necessary in order to secure the collection of a *judgment or decree* belonging to any estate, it shall be the duty of the executor, &c., to bid for and become the purchaser of real estate," &c. (Sect. 38.)

" When a person shall die after the rendition of a *judgment or decree* for the payment of money against him in a court of record, execution may issue against the real estate of such deceased person, or sale may be made under such *decree*, without reviving the *judgment or decree* against his heirs," &c. (Sect. 39.)

From all this it is perfectly clear that the Legislature of Illinois fully appreciated the distinction between "judgment" and " decree," and meant to observe it. And we are fully justified, therefore, in asserting that under the laws of Illinois, construed according to the intent of the Legislature, and construed as a similar statute has been by this Court, decrees in chancery do not bear interest.

The only reply that can be made to this, is that interest has been allowed on decrees by the Supreme Court of Illinois in a number of cases; and that the construction thus put by that court on their State statutes, though directly opposed to the view taken by this Court, must be allowed to govern.

But first, admitting for the sake of the argument that it is the province of the State Court to construe this statute, and that such construction when clearly made will be controlling

upon this court, we insist that no such construction has as yet been put upon the statute by the Supreme Court of Illinois. That court, it is true, has several times allowed interest on decrees in chancery, but a careful examination of these decisions, we think, will clearly show that no such construction of the statute has yet been made as will include the present case, or be binding upon this Court.

The key note to all these decisions will be found in the very first of them. (*Aldrich* v. *Sharp*, 3 Scam., 263.) In that case the court cites the previous case of *Mason* v. *Eakle*, Breese, 52, to the effect that in *actions on contracts* the contract is merged in the judgment, and the interest thereafter must be at six per cent., and then adds: "We see no reason why the rule should "not be applicable to decrees in chancery for *foreclosure of* "*mortgages.*"

Several things are here to be noted.

First. It is *actions on contract* that the court is speaking of, and not only are they actions on contract, but the contracts were written, and expressly promised to pay interest. Nor is this distinction unimportant. For a court of chancery may by virtue of its general equity powers, and without any statute to that effect, award interest on decrees based on contracts by which the defendant has expressly promised to pay interest, but will seldom or never do this where no contract exists. (*Cobb* v. *Thompson*, 1 A. K. Marshall, 507.) And that this may well have influenced the mind of the Court is suggested not only by the language used in this leading case, but by the fact more fully shown hereafter, that in some of the States the only decrees that bear interest are precisely of this character, viz, decrees based on written contracts to pay interest.

Second. In this case of *Aldrich* v. *Sharp* the court below had given the mortgagee twelve per cent. interest, on the ground that the note drew interest at that rate, and all that was asked by the mortgagor was to have it reduced to six. The mortgagee's right to some rate of interest seems tacitly to have been

taken for granted. It could hardly have been expected, therefore, that the Court should of its own motion be astute to find out for the mortgagor any further or greater relief; even admitting him to have been entitled to it, which, as he had expressly promised to pay interest, is certainly doubtful.

No reference was made to the statute in this case, nor was its construction in any way considered.

In *Warren* v. *McCarthy*, 25 Ills., 104, the only questions before the Court were whether debt will lie on a foreign judgment; and whether it is necessary to aver in the declaration that interest is allowed by the laws of the foreign State.

White v. *Haffaker*, 27 Ills., 349, was a bill to establish a vendor's lien; that is, substantially the same as a foreclosure; and the Court held, as before, that six per cent. instead of ten was all that should have been allowed by the court below.

In *Wayman* v. *Cochrane*, 35 Ills., 155, there was a judgment and then a foreclosure. The court below had again given ten per cent; and the Supreme Court said it should be only six.

Hunter v. *Hatch*, 45 Ills., 178, was a bill to redeem, where, of course, the plaintiff had to offer to pay interest.

Now, in all these cases, except *Warren* v. *McCarthy*, the suit was founded, as in *Mason* v. *Eakle*, on a written contract to pay interest; the decisions of the court do not go beyond that class of cases, or, if they are supposed to go beyond, they are to that extent merely *obiter dicta*. In *Warren* v. *McCarthy*, it was a judgment and not a decree on which the interest was allowed.

Again, the question we are now considering has never yet been presented to the Supreme Court of Illinois. The point has never been made, nor have any authorities been cited. Are we to assume in advance that when this precise question is presented, that court will hold that, under the law as it now stands, all decrees are to bear interest? Are we to assume that they will extend their former decisions so as to make

them embrace decrees founded, not on a contract to pay interest, but on a simple tort?

The whole case thus far, then, may be summed up as follows:

The United States Supreme Court, whose mandate is now here to be interpreted, has itself furnished us with the rule for that interpretation. The precise question we are here considering has been already fully considered and determined by this Court.

To this we may add the similar decisions of the Supreme Courts of Tennessee and Kentucky, and the reasoning drawn from the language of the Legislature of Illinois in the several statutes above noted.

On the other hand, the Supreme Court of Illinois has never passed upon this question, and never had this question brought before it.

Can we doubt then that that Court, whenever the question properly comes up for its adjudication, in view of the argument and authorities here presented, will arrive at the same conclusion as that announced by this? Or, if it adheres to its former decisions—that decrees in foreclosure ought to bear at least six per cent. interest where the note called for ten or twelve per cent.—is there any reason to suppose that it will extend this rule to cases where no interest had been expressly reserved?

Appellants at least may claim that, until the Illinois courts *have* so decided, the decision of this Court shall govern. We know perfectly what are the views of this Court on the subject, for its decision has already been made; but we do not know what conclusion may finally be reached by the courts of Illinois. On the one side we have absolute certainty and precision; on the other, nothing but argument and conjecture. In such a case it would seem that there ought to be no difficulty in choosing between them.

But, in the second place, if we admit that the above decisions of the Supreme Court of Illinois have clearly and beyond

all dispute settled this question so far as the State Courts are concerned, the question then arises whether those decisions are controlling upon this Court, or whether, on the other hand, this is not a matter to be decided by this Court alone.

It would seem to be properly a question for this Court. It is true that the Federal Courts, as a general rule, adopt the construction put by the several States upon their own statutes. This has been settled by a long line of decisions, and, of course, there is no thought of disputing it. The only question is whether those decisions are applicable to this case. We have found none fully in point. The case is peculiar, and must be decided mainly on its own merits, without much aid from prior adjudications.

The cases in which the Federal Courts follow the decisions of the State Courts are those relating to real estate, or in which settled rules of property have been established, or to statutes of a purely local character, in which no Federal question is involved.

But the case at bar falls under no one of these several heads. It has, of course, nothing to do with real estate, nor with any settled rule of property. Nor does it fall under the third head, for though the statute itself is local, yet in this special connection it may be said to lose that character, and to become national. It is not simply the meaning of the State statute that is here in question, it is rather that of the act of Congress, and the rule of this Court in furtherance of that act. It is so far a Federal, and not a State question. The State law is here engrafted upon the Federal, and made a part of it, and is to be construed as such, not by the State Courts, but by this Court.

Again, though this Court generally follows the decisions of the State Court in construing statutes where settled rules of property have been established under them; yet, as to statutes of a different character, such as those prescribing *remedies of creditors*, this rule is not applied. It is peculiarly the prov-

ince of this Court to decide all questions relating to the process of the United States Courts.

Butz v. *City of Muscatine*, 8 Wall., 575.

" Cases involving State statutes, in which the adjudications of the courts of the States in relation to them have been departed from by this Court, extend in an unbroken series from an early period after its organization to the present time." Ib., 583.

" The Federal Courts, in their decisions, are independent of those of the States, except as to the laws regulating real property."

Smith v. *Hentz*, 25 Leg. Int., 244.

In *Olcott* v. *The Supervisors*, 16 Wall. 690, this court says: " Now, whether a use is public or private is not a question of constitutional construction. It is a question of general law. It has as much reference to the constitution of any other State as it has to the State of Wisconsin. Its solution must be sought, not in the decisions of any single State tribunal, but in general principles common to all courts," &c.

So, it would seem, the meaning of the word " judgment " is a question of general law, having as much reference to the laws of any other State as it has to the State of Illinois; and that, therefore, the meaning must be sought, not in the decisions of any single State, but in general principles common to all.

Once more, the Federal Courts follow the decisions of the State Courts solely to avoid any conflict between them. But there can be no conflict here, because in this class of cases, viz., suits for infringement, the State Courts have practically no jurisdiction. Hence, there is here no reason for following their decisions.

II.

The next question to be presented is whether there are or can be any decrees in the State Courts that can properly be said to be " similar " to the decrees entered in these two cases, in the sense in which that word must be understood in the 23d general rule of this Court?

These are decrees based on the infringement of a patent; and the appellants insist that neither according to the spirit nor the letter of the rule can they be said to be similar to any decrees in a State Court.

First, no meaning can be given to the word "similar," as here used, that will embrace decrees for infringement. The word must have been used by this Court with a definite, well understood meaning. It is obviously a term of limitation, and meant to mark a distinction between one kind of judgment or decree and another.

The rule also is intended for universal application, and must be so interpreted, therefore, as to make it apply alike to all the States. It may produce different results in the different States, but that difference must be due to the difference between their laws, and not to a varying construction of the rule. It never could have been intended to have one rule for Maine and another for Georgia, or that "similar" should have a narrow meaning in Iowa and a broad meaning in Illinois.

So much being admitted, as we presume it must be, it follows that the only meaning that can be given to the words "similar judgments or decrees," to satisfy all the requirements of the law, is "*judgments or decrees based on similar causes of action.*" This will become apparent on reference to the interest laws of the several States. In a number of the States no interest is allowed either on judgments or decrees of any kind, and there, of course, no interest could under the rule be allowed on the decrees here in question. In others interest is allowed on judgments and not on decrees. In others it is allowed on all *money* judgments and decrees; in others only on judgments and decrees based on contracts; and in others still only on those based on contracts expressly providing for interest.

Thus, in South Carolina, all money decrees and judgments bear interest at 7 per cent. (Rev. Stat. of 1873, p. 318.)

In Kansas all judgments of courts of record, &c., bear interest

at 7 per cent., except when a rate of interest is specified in any contract, in which case the judgment shall bear the rate mentioned in the contract, not exceeding 12 per cent. (Comp. Laws of Kan. of 1879, Secs. 2,925–6.)

The law is the same in Iowa, except as to the rate of interest; and decrees are mentioned, as well as judgments. (Code of 1873, Sec. 2,078.)

The laws of Nebraska and Michigan are substantially the same as that of Iowa. (General Stat. of Neb. of 1873, p. 446. Compiled Laws of Mich. of 1871, Sec. 1635.)

The law is also the same in Missouri, only it reads "judg- "ments and orders for money," instead of "judgments and de- "crees." (Wagner's Wis. Stat. I., 783.)

In the following States, however, no interest is allowed, except where expressly provided for in the contract. Thus in Indiana all judgments on *contracts* bear the same interest as expressed in the contract. (Revision of 1861, p. 600.)

In Colorado, in all executions to be issued on judgments on *contracts*, express or implied, interest is given at 10 per cent. (General Laws of 1877, Sec. 1,412.)

In Mississippi all judgments and decrees on *contracts* bear interest at the rate of the debt on which such judgment or decree was rendered. (Rev. Code of 1871, Sec. 2,279.)

In Georgia judgments bear the same interest as the *contracts* on which they are obtained. (Cobb's Digested Laws of 1851, I., p. 394.)

In Ohio on all judgments, decrees or orders rendered on any bond, bill, note or other instrument in writing *containing stipulations to pay interest*, &c., interest is computed till payment, at the rate specified in such bond, &c. (Sayler's Stat., III, p. 1831.)

And finally, in Kentucky an entirely different law is in force, and judgments, except for malicious prosecutions, libel, slander,

injury to the person, bear legal interest from their date. (General Stat. of 1873, p. 563.)

Now, we repeat, to meet all the varying requirements of the above statutes, to interpret the rule of this Court, so that it shall have one and the same meaning in all the States, and so that it may afford a safe and certain guide to the several Circuit Courts of the United States, there is but one construction possible, and that is, that "similar judgments and decrees" mean judgments and decrees based on the same or similar causes of action. If we adopt any other meaning, we shall find ourselves involved in absurdity and confusion.

Thus, let us suppose that the only similarity here intended is, that the decrees shall be for the payment of money. Then the mandate would amount to this, that interest should be paid at the same rate that is allowed on money decrees; and this must be the rule for all the States, else we shall have one rule for this State, and another for that.

This, then, being the rule, a mandate issues to the Circuit Court of Mississippi, allowing interest at the same rate which is there allowed on decrees for money. How is that court to know what kind of a money decree is meant, the only money decrees in that State, that bear interest, being those based on contracts? It may be said, indeed, that it means in that case *similar* money decrees; but that at once destroys the definition with which we started. It shows that the decree being for money is not enough, but that we must look for a more definite meaning. It must be not only a money decree, but a money decree based on contract, in order to meet the law of Mississippi.

Let us, then, adopt *this* test of similarity, and see how it works in Ohio. In that State interest is not allowed on all money decrees, even when based on contract, but only on contracts expressly providing for payment of interest. We must here, therefore, go a step farther, and say that only those decrees are similar where the defendant has expressly promised to pay in-

terest. That is to say, those decrees only are similar in Ohio which are based on similar causes of action.

This interpretation will also meet the requirements of the law of Mississippi, and in fact of all the States, and it is the only interpretation that will. If that is the meaning of "similar" in Ohio, it must have the same meaning everywhere else.

If a decree for money, based on a tort, or on a contract making no mention of interest, is not similar in Ohio to a decree based on a contract to pay interest, it cannot, in the very nature of things, be similar to it in any other State. A decree does not change its character by changing its forum. If a decree, based on infringement, is in Illinois similar to a decree for foreclosure, it must also be similar in Georgia and Ohio; if it is not similar in Georgia or Ohio, it cannot be similar in Illinois.

Second. Coming next to the reason of the rule, we shall find there the strongest possible corroboration of the above argument. The reason of the rule is obvious. It is solely to secure uniformity between remedies in the State and Federal Courts, so that a suitor in the Federal Court may recover no more and no less than if he had sued *on the same cause of action* in the State Court. But this reason has no application to suits for infringement, since such suits are never brought in the State Courts; and we are forced to presume, therefore, that this Court, in framing the rule, had no thought of including suits of that description. The court never could have intended to say that because a *mortgagee* in Illinois recovers six per cent. in the State Court, therefore a *patentee* should recover the same in the Federal Court. And still less, that because a mortgagee may recover ten per cent. in the State Courts of Michigan and Nebraska, and twelve per cent. in Kansas, the infringer of a patent must there pay at the same rate.

The only answer that can be made with any plausibility to the above argument, is, that in Illinois all money decrees are alike; that they all bear the same rate of interest, there is no

such distinction between them as exists in the other States above mentioned, and therefore they are all similar.

But the fallacy of such an answer may be readily shown, even admitting for the moment what we deny, that all decrees do there bear interest.

To say that all decrees in Illinois bear interest, and are therefore all similar, is arguing in a circle. It is putting the thing to be proved, the conclusion, in place of the premises. What we are here seeking to find out, is whether decrees based on infringement bear interest, and to determine this, we must first know whether such decrees are similar to any decrees known to the State Courts of Illinois. The similarity must be determined beforehand, and without any reference to the question of interest. If the decrees are similar, then they bear interest, but they are not similar *because* they bear interest.

Again, it may be said, what difference does it make, if all money decrees in Illinois bear interest, whether the decrees here in question are similar to one kind of decree or another; why trouble the court to define precisely the meaning of the word "similar," when, whatever it means, the result in this case must be the same?

This is the same objection as the former, in a little different shape. Its fallacy consists in assuming that a decree based on infringement must be similar to *some* decree in Illinois, no matter what meaning is given to the word, and that therefore we need not trouble ourselves to define it. But this is assuming the very thing to be proved, viz: that there are decrees in the Illinois State courts similar to decrees of infringement, in the sense in which that word must have been used by this Court.

Finally, it may be urged, that if the court sustains these objections, the effect will be to deprive the patentee in these cases of all interest. But, as to that, we beg respectfully to suggest, first, that if that result should follow, there would be nothing inequitable about it, for the patentee, or rather his assignee,

would even then be receiving a reward, which every one must admit is out of all proportion to his deserts, or the merits of his invention.

Here are only two roads paying him some $70,000.00. If he should recover at the same rate in the other suits now actually pending, he would receive at least ten times that sum, or seven hundred thousand dollars. Secondly, in several of the States, as we have already seen, the only decrees that bear interest are those based on contracts to pay interest, and in those States, of course, no interest could, under this rule, be recovered by a patentee. What would thus necessarily happen in one State, can hardly be considered inequitable in another. We do not, of course, expect this to influence the mind of the court in determining the above questions; but these considerations ought certainly to relieve the case of all appearance of unfairness or oppression.

All which is respectfully submitted.

GEORGE PAYSON,

Counsel for Appellants.

OFFICE SUPREME
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D. W. MIDDLET

Supreme Court of the United States.

OCTOBER TERM, A. D. 1879.

PHILADELPHIA BAR ASSOCIATION

THE CHICAGO AND ALTON RAILROAD COMPANY, *Appellant,*

v.

SAMUEL H. TURRILL, *Appellee.*

No. 250.

Appeal from Circuit Court of United States, N. D. Illinois.

Brief and Argument for Appellee.

FRANCIS H. KALES,
Counsel for Appellee.

CHICAGO:
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1880.

Supreme Court of the United States,

OCTOBER TERM, A. D. 1879.

THE CHICAGO AND ALTON RAILWAY COMPANY, *Appellant,*
v.
SAMUEL H. TURRILL, *Appellee.*

No. 250.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief of F. H. Kales for Appellee.

STATEMENT.

This is a second appeal by the Chicago and Alton Railroad Company. The first appeal was from a decree of the same Circuit Court, passed July 16, 1874. This and four other cases were heard together at the October Term 1876, and are reported in 4 Otto 695, under the title of CAWOOD PATENT. The decree below was then affirmed.

The judgment of this Court, and the mandate to the Circuit Court, are in these words:—

"It is now here ordered, adjudged and decreed by this "Court that the decree of the said Circuit Court in this "cause be, and the same is hereby, affirmed with costs and "interest until paid, at the same rate per annum that "similar decrees bear in the Courts of the State of Illi-"nois; and that the said complainant, Samuel H. Tur-

"rill, recover against the said defendant three hundred "and forty-nine dollars and thirty-two cents for his costs "herein expended and have execution therefor."

"You therefore are hereby commanded that such exe- "cution and proceedings be had in said cause as accord- "ing to right and justice and the laws of the United "States ought to be had, the said appeal notwithstand- "ing." (Rec. pp. 1-2.)

On the 9th day of July, 1877, such proceedings were had under the mandate that the CIRCUIT COURT made the following order:

"The mandate having been filed, showing that the de- "cree in this cause has been affirmed in the Supreme "Court of the United States, it is ordered that the com- "plainant have execution thereon, in conformity with the "usage and practice of this Court, together with the costs "in this Court and the Supreme Court; the Court being "of opinion that under the law of this State and under the "mandate of the Supreme Court in this case, the com- "plainant is entitled to interest on this decree from the "date thereof." (Rec. pp. 2-3.)

The defendant then excepted to the opinion of the Court and prayed an appeal from the decree allowing interest on the former decree from its date. The appeal was allowed under a bond conditioned so as to operate as a *supersedeas*.

It is conceded that the effect of the judgment of the Circuit Court under the mandate is, to permit the collection of interest on the first decree, entered July 16, 1874, from the date of its rendition, and not merely from the date of affirmance by this Court, or from the entry of the order of the Circuit Court made in execution of the mandate. The appellee claims that the decree, as thus made, is lawful and in accordance with the mandate of this Court; while the appellant questions the correctness of the decree in this respect.

POINTS.

I.

BY THE LAWS OF ILLINOIS, DECREES IN EQUITY, LIKE JUDGMENTS AT LAW, HAVE, EVER SINCE 1841, BORNE INTEREST AT THE RATE OF SIX PER CENT. PER ANNUM.

Rev. Stat. Ill., 1874, Chapter 22, Chancery, p. 203; Secs. 44 and 47 enacted in 1833, and Sec. 49 in 1839, and in force as revised from July 1, 1872.

Id. Chap. 77 of Judgments, Decrees, and Executions, p. 622, Sec. 7 enacted in 1825, and in force as revised from July 1, 1872.

Id. Chap. 74 of Interest, p. 614, Sec. 3, enacted in 1819, and in force as revised from July 1, 1874.

All of these sections, *the material parts of which are hereafter set forth*, were in force when the following cases, involving the rate of interest on decrees, were decided.

Aldrich v. *Sharp*, 3 Scam. 261; decided 1841.
Warren v. *McCarthy*, 25 Ill. 95; decided in 1860.
White v. *Haffaker*, 27 *id.* 349; decided in 1862.
Hunter v. *Hatch*, 45, *id.* 178; decided in 1867.
Becker v. *Becker*, 79 *id.* 532; decided in 1875.
Haas v. *Chicago Bld'g Society*, 80 *id.* 248; decided in 1875.
Dinet v. *Eigenmann*, *Ibid.* 274; decided in 1875.

1. All of these were cases in equity, and directly or indirectly involved the question of interest on money decrees. In every case the Court held that money decrees, like judgments at law, bore interest at the rate of *six per cent. per annum*, from their date.

2. In Illinois there is no distinction as to interest, between money decrees made in suits of foreclosure, &c. where the parties had stipulated for interest, and

money decrees in cases arising out of *torts*, such as alimony, &c.

Becker v. *Becker*, 79 Ill. 532.
Dinet v. *Eigenmann*, 80 *id.* 274.

3. Interest must be collected from the date of the decree, whether it be so expressed therein or not.

Stats. of Ill. *supra*, Chap. 77, entitled "*Judgments, Decrees and Executions*," Sec. 7.
White v. *Haffaker*, 27 Ill. p. 351.

(1) Where, by operation of law, the decree draws interest, the officer must collect it; and, on application, the Court can, if necessary, force him to do so.

(2) In New York, and perhaps in other States, the statute gave interest on judgments rendered on contracts, but not on those rendered for *torts;* while in Illinois, the statute gives interest upon *all* judgments, and directs that an indorsement or order, directing the collection of interest, shall be made upon the execution when issued.

Stats. of Ill. *supra*, Chap. 77, entitled "*Judgments, Decrees and Executions;*" Sec. 7, *post* p. 5.
White v. *Haffaker*, *ubi sup.*
Ryckman v. *Parkins*, 5 Paige, 543.

4. The statutes above cited, or such parts thereof as are considered pertinent, are now set forth as follows: the italics being here inserted for convenience:—

The material parts of SECS. 44, 47 and 49, Chap. 22, entitled CHANCERY, in force as revised, from July 1, 1872, are in these words:

"§ 44. A decree for money shall be a lien on the "lands and tenements of the party against whom it is "entered, to the same extent and under the same limita- "tions as a judgment at law."

This section has been in force in substantially the same words from 1833. Gale's Stat. 1839, p. 144, Sec. 22.

"§ 47. When there shall be no direction that a mas-
"ter in chancery or commissioner execute a decree, the
"same may be carried into effect by execution, or other
"final process, according to the nature of the case, di-
"rected to the sheriff or proper officer of the county;
"which, when issued, shall be executed and returned by
"the sheriff or other officer to whom it may be directed,
"*and shall have the same operation and force as similar writs*
"*issued upon a judgment at law.*"

* * * * * * * *

The substance of this section, so far as it is here material, has been in force from 1833. Gale's Stat. 1839, p. 144, Sec. 22.

"§ 49. Whenever *an execution* shall have been issued
"against the property of a defendant, *on a judgment at law*
"*or in equity*, and shall have been returned unsatisfied, in
"whole or in part, the party suing out such execution
"may file a bill in chancery against such defendant, and
"any other person, to compel the discovery of any prop-
"erty or thing in action," &c. * * *

"The Court shall have power to compel such discov-
"ery, and to prevent such transfer, payment or delivery,
"and to decree satisfaction of the sum remaining due
"*on such judgments*, out of any personal property, money
"or things in action, belonging to the defendant," &c., &c.

The substance of this Section, so far as it is here material, has been in force from 1839 (Laws 1839, p. 50).

SEC. 7 of Chap. 77, entitled "Judgments, Decrees and Executions," in force as revised from July 1, 1872, is in these words:

"§ 7. Every execution issued upon a judgment shall
"direct the collection of interest thereon, from the date
"of the recovery of the judgment until the same is paid,
"at the rate of six per centum per annum."

This Section is a revision of Sec. 4 of Act of 1825. Gale's Stat. 1839, p. 389.

SEC. 3 of Chap. 74, entitled "Interest" in force, as revised from July 1, 1874, is in these words:

"§ 3. Judgment recovered before any Court or "magistrate shall draw interest at the rate of six per "centum per annum from the date of the same until "satisfied. When judgment is entered upon any award, "report or verdict, interest shall be computed at the "rate aforesaid, from the time when made or rendered "to the time of rendering judgment upon the same, and "made a part of the judgment."

That portion of this section here material has been in force from 1819. Gale's Stat. p. 343, Sec. 3.

II.

THE JUDGMENT OF THE COURT BELOW WAS IN ACCORDANCE WITH THE JUDGMENT OF AFFIRMANCE AND MANDATE OF THIS COURT.

1. Under the mandate of this Court, the Circuit Court was required to order an execution, containing a direction to the Marshal to collect interest from the date of the original decree, and in effect did so.

Mandate, Rec. p. 2.
23d Rule of the Court.
Rev. Stat. Secs. 1010, 1012.
West Wisconsin R'y Co. v. *Foley*, 94 U. S. 100.
Perkins v. *Fourniquet*, 14 How. 328.
The Lucille, 15 Wall. 676.
1 Stat. p. 85 Sec. 23, Judiciary Act, 1789.
Ibid. Sec. 22.
Wiscart v. *Dauchy*, 3 Dall. 321, 327.
2 Stat. p. 244, Sec. 2.
Rules 17, 18, 1 Cranch, xviii.
Rule 62, 13 How. v.
Rule 23, 21 *Id.* xii.
Rule 23, 11 Wall. x.

III.

THE APPEAL IN THIS CASE IS FRIVOLOUS, VEXATIOUS AND OPPRESSIVE, AND ENTITLES THE APPELLEE TO DAMAGES UNDER THE RULES OF THIS COURT.

Mandate, &c. Rec. p. 2–3.
Rule 23.
Perkins v. *Fourniquet*, 14 How. 328.
Wiser v. *Blachly*, 2 Johns. Ch. 488.
Whitney v. *Cook*, 99 U. S. 607.
Armory v. *Armory*, 91 *id.* 356.
West Wisconsin R'y Co. v. *Foley*, 94 *id.* 100.

1. In *Perkins* v. *Fourniquet*, the appellant paid all of the judgment included in the affirmance, and appealed against the interest alone. The appellant here could have done the like.

2. On a motion to dismiss, at the October Term, 1877, the statutes and the judicial decisions of Illinois on the subject of interest, were referred to. But the appellant, in an opposing brief, then declined to discuss the question of interest, although it might have consented to do so under the 20th Rule.

ARGUMENT.

Cases number 250 and 251 involve precisely the same point which arises in the same manner in each case. In 1874, money decrees against the appellants were rendered in the Court below. Appeals were then taken to this Court, and in April, 1877, it was in each case "ordered, "adjudged and decreed by this Court that the decree of "the said Circuit Court in this cause be, and the same is "hereby, affirmed with costs and interest until paid, at "the same rate per annum that similar decrees bear in "the Courts of the State of Illinois."

And the Circuit Court was further directed to execute the decree of this Court accordingly.

Under this mandate the Circuit Court directed execution to issue in both cases for the amount of the decree, with interest thereon from its date. The Court in its final order declared that under the law of Illinois, and under the mandate of this Court, the complainant was entitled to interest on these decrees from their date. To that opinion the defendants excepted and prayed the present appeals, which were then allowed.

Under the mandate the sole question is: Whether similar decrees bore interest in the Courts of the State of Illinois, when the decree of affirmance was rendered in these cases?

This is a question which must be determined by the judicial decisions of that State, so far as they bear upon the point, and to these, references will now be made.

In *Aldrich* v. *Sharp*, 3 Scam. 261, determined by the Supreme Court of Illinois, at the December Term, 1841, it appears a mortgage had been given to secure $450, with interest at *twelve* per cent. per annum; the statutory rate in the absence of an agreement, was but *six per cent.*; the lower Court had decreed payment of the principal,

together with interest at the rate of twelve per cent. (the contract rate), from the date of the mortgage until the payment of the decree. To reverse this decree a writ of error (of the same effect in Illinois as the ordinary appeal in equity cases) was prosecuted. The first error considered by the Court, questioned the correctness of the decree in relation to interest. On that subject the Court say:

"Where a judgment is obtained on a contract, the "contract is at an end, being merged in the judg- "ment, and the judgment is controlled, not by the con- "tract, but by the statute, which gives interest only at "the rate of *six per centum per annum*. We see no reason "why the rule should not be applicable to decrees in "chancery for the foreclosure of mortgages," &c. And the Court conclude the opinion by reversing the decree, and declaring that the "cause is remanded *for further* "*proceedings conformable to this opinion*."

Warren v. *McCarthy*, 25 Ill. 95, determined in 1860, was an action of *debt* on the decree of a foreign court. The declaration omitted an averment of the rate of interest allowed by the laws of the State in which the decree was rendered. In the lower court evidence of the rate of interest on decrees from their date in the foreign State was introduced, and was at the same rate allowed by the laws of Illinois. In the Supreme Court, the question was, whether, in view of the pleadings, there had been error in the allowance of interest. On this question the Supreme Court say:

"The practice in this State is believed to be uniform, to "allow interest on decrees rendered in this State, and yet "they are not named by the statute. And this court has "held that decrees rendered in this State are governed by "the interest laws, like judgments at law. *Aldrich* v. "*Sharp*, 3 Scam. 261. We are therefore of the opinion "that to entitle a recovery on a decree of a sister State, an

"averment in the declaration, that interest is allowed by "the laws of the State in which it is rendered, is unneces- "sary."

In *White* v. *Haffaker*, 27 Ill. 349, determined in 1862, the decree ascertained the balance due, and directed interest on the decree at the rate of *ten per cent.* per annum to the day of sale. The Court in reversing this decree thus state the case:

"The record in this case presents the question, *whether* "*a decree may draw a greater rate than six per cent. interest?*

And on this subject the Court say:

"On the hearing it is proper that the Court should as- "certain the sum due upon the note, and decree its pay- "ment, *leaving the law to regulate the interest*, or, at most, "decree no more than six per cent. Otherwise, the "Court would have the right to deprive the complainant "of all interest on the decree which is given to him by the "law. *The statute* only having allowed *judgments and de-* "*crees* to draw six per cent., it was error in the Court be- "low to decree that the sum found should draw *ten per* "*cent.*"

The Court, instead of remanding the cause, itself entered a decree accordingly. They say: "But a decree "will be entered in this Court for the sum found to be "due, to draw *six per cent. interest.*"

In *Hunter* v. *Hatch*, 45 Ill. 178, determined in 1867, the Court say:

"This decree must be reversed, because by its terms "appellant is required to pay *ten per cent.* interest on the "sum found by the decree to the appellee, from the "date of its rendition till the money shall be paid. "*Pearsons* v. *Hamilton*, 1 Scam. 415; *White* v. *Haffaker*, "27 Ill. 349. The rule is so firmly fixed by these cases, "that a decree can only bear *six per cent.* under our law, "that we regard it wholly unnecessary to again discuss "the question, and shall content ourselves by reversing

"the decree because it is violative of the rule distinctly "announced in those cases."

After this pointed language of the Supreme Court of Illinois, no question in regard to interest on decrees seems to have been brought before that court for nearly eight years—not until the cases of *Becker* v. *Becker*, 79 Ill. 532; *Dinet* v. *Eigenmann*, 80 *id.* 274; and *Haas* v. *Chi. Bldg. Society*, *Ibid.* 248; in which the opinions were promulgated in the printed volumes of the Reports, in June 1877, and before the appeals were prayed in the cases at bar.

Becker v. *Becker* and *Dinet* v. *Eigenmann* were cases in equity for divorce and *alimony*. In each case the lower court entered a decree for alimony, and directed that after a certain date the decrees should bear interest at the rate of *ten per cent. per annum*. In both cases the Supreme Court itself modified the decrees of the court below, directing that they should draw but *six per cent.* from the time fixed by the decrees.

It was suggested by the appellant's counsel, in the court below, that the Illinois cases, giving interest on decrees, extend only to cases of contract, where either the law or the parties had previously made a rate of interest for the transaction; and that the rule thus established did not extend to the case of decrees for *torts* or where the original transaction did not, either by law or by a contract between the parties, draw interest. The cases of *Becker* v. *Becker*, and *Dinet* v. *Eigenmann*, *supra*, decreeing alimony, and decided before these appeals were taken, overthrow this assumption, and show that no such distinction has ever been recognized by the courts of the State of Illinois.

In *Haas* v. *Chicago Bld'g Society*, 80 Ill. 248, the Supreme Court reversed and itself modified the decree of the Court below, in the same manner as in the cases of *Becker* v. *Becker* and *Dinet* v. *Eigenmann*, *supra*.

These uniform and unvarying judgments of the highest Court of the State, covering a period of nearly forty years, ought to settle the question whether decrees, under the laws of Illinois, bear interest, and at what rate.

Nor can the suggestion that decrees *eo nomine* are not mentioned in the statutes of Illinois in connection with its interest laws, diminish the force of these judicial determinations.

On the other hand, by section 49, Chap. 22 of the Illinois Statutes, *ubi sup.*, regulating the practice in chancery, in force ever since 1839, the term *judgment* is applied to money decrees of courts of equity as well as to judgments of courts of law. The language of this section in that connection is this: "Whenever *an execution* shall "have been issued against the property of a defendant, "*on a judgment at law* or *in equity*" &c.; and again; "the "court shall have power * * to decree satisfaction of "the sum remaining due *on such judgments*," &c.

These appeals are not only frivolous but unnecessarily oppressive.

That they are frivolous clearly appears from the statutes of Illinois and the adjudged cases already referred to. In July, 1874, when these decrees were first rendered by the Circuit Court, all of the statutes to which reference has been made were in force in that state, in a new revision of its laws, the latest of which took effect July 1 of that year. And, when the appeals were taken, all of the judicial decisions to which reference has been made, had been officially promulgated.

That the appeals are unduly oppressive and vexatious is apparent, because the interest question was severable from the amount of the original judgments which had been affirmed. The defendants could have performed the decrees thus affirmed, by paying what they were bound to admit was due, and could have taken their ap-

peal as to the residue or interest, which was the subject of the new order of the Circuit Court. Such was the course pursued in *Perkins* v. *Fourniquet, supra.*

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Again, it was in the power of the appellants to have met the interest question on the merits, even, under the motion to dismiss made in 1877. Here, again, it may be observed, the appellants were not bound by any rule of law thus to meet the question, or submit it upon printed argument. But their failure to do so is a circumstance to be taken into account in connection with their other conduct, where a claim for damages is made upon them for vexatious delay.

Again, it appears from the records of this Court that in the last Term, the pendency of these cases here was made the occasion of vexatious and groundless motions for leave to file bills of review on the alleged ground of newly discovered evidence; and these, it is submitted, should be taken into account in applying the rule of this Court relating to damages in such cases.

FRANCIS H. KALES,

Of Counsel for the Appellee.

OFFICE SUPREME COURT U.S.
FILED
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D. W. MIDDLETON

Supreme Court of the United States.

OCTOBER TERM, A. D. 1879.

PHILADELPHIA LAW ASSOCIATION

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, *Appellant,*

v.

SAMUEL H. TURRILL, *Appellee.*

No. 251.

Appeal from Circuit Court of United States, N. D. Illinois.

Brief and Argument for Appellee.

FRANCIS H. KALES,
Counsel for Appellee.

CHICAGO:
Printed by the Chicago Legal News Co., 47 and 49 Dearborn Street.
1880.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1879.

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,
Appellant,
v.
SAMUEL H. TURRILL,
Appellee.

No. 251.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief of F. H. Kales for Appellee.

STATEMENT.

This is a second appeal by the Chicago, Burlington and Quincy Railroad Company. The first appeal was from a decree of the same Circuit Court, passed July 16, 1874. This and four other cases were heard together at the October Term 1876, and are reported in 4 Otto 695, under the title of CAWOOD PATENT. The decree below was then affirmed.

The judgment of this Court, and the mandate to the Circuit Court, are in these words:—

"It is now here ordered, adjudged and decreed by this "Court that the decree of the said Circuit Court in this "cause be, and the same is hereby, affirmed with costs and "interest until paid, at the same rate per annum that "similar decrees bear in the Courts of the State of Illi-"nois; and that the said complainant, Samuel H. Tur-

"rill, recover against the said defendant three hundred "and forty-nine dollars and thirty-two cents for his costs "herein expended and have execution therefor."

"You therefore are hereby commanded that such exe- "cution and proceedings be had in said cause as accord- "ing to right and justice and the laws of the United "States ought to be had, the said appeal notwithstand- "ing." (Rec. pp. 1-2.)

On the 9th day of July, 1877, such proceedings were had under the mandate that the CIRCUIT COURT made the following order:

"The mandate having been filed, showing that the de- "cree in this cause has been affirmed in the Supreme "Court of the United States, it is ordered that the com- "plainant have execution thereon, in conformity with the "usage and practice of this Court, together with the costs "in this Court and the Supreme Court; the Court being "of opinion that under the law of this State and under the "mandate of the Supreme Court in this case, the com- "plainant is entitled to interest on this decree from the "date thereof." (Rec. pp. 2-3.)

The defendant then excepted to the opinion of the Court and prayed an appeal from the decree allowing interest on the former decree from its date. The appeal was allowed under a bond conditioned so as to operate as a *supersedeas*.

It is conceded that the effect of the judgment of the Circuit Court under the mandate is, to permit the collection of interest on the first decree, entered July 16, 1874, from the date of its rendition, and not merely from the date of affirmance by this Court, or from the entry of the order of the Circuit Court made in execution of the mandate. The appellee claims that the decree, as thus made, is lawful and in accordance with the mandate of this Court; while the appellant questions the correctness of the decree in this respect.

POINTS.

I.

BY THE LAWS OF ILLINOIS, DECREES IN EQUITY, LIKE JUDGMENTS AT LAW, HAVE, EVER SINCE 1841, BORNE INTEREST AT THE RATE OF SIX PER CENT. PER ANNUM.

Rev. Stat. Ill., 1874, Chapter 22, Chancery, p. 203; Secs. 44 and 47 enacted in 1833, and Sec. 49 in 1839, and in force as revised from July 1, 1872.

Id. Chap. 77 of Judgments, Decrees, and Executions, p. 622, Sec. 7 enacted in 1825, and in force as revised from July 1, 1872.

Id. Chap. 74 of Interest, p. 614, Sec. 3, enacted in 1819, and in force as revised from July 1, 1874.

All of these sections, *the material parts of which are hereafter set forth*, were in force when the following cases, involving the rate of interest on decrees, were decided.

Aldrich v. *Sharp*, 3 Scam. 261; decided 1841.
Warren v. *McCarthy*, 25 Ill. 95; decided in 1860.
White v. *Haffaker*, 27 *id.* 349; decided in 1862.
Hunter v. *Hatch*, 45, *id.* 178; decided in 1867.
Becker v. *Becker*, 79 *id.* 532; decided in 1875.
Haas v. *Chicago Bld'g Society*, 80 *id.* 248; decided in 1875.
Dinet v. *Eigenmann*, *Ibid.* 274; decided in 1875.

1. All of these were cases in equity, and directly or indirectly involved the question of interest on money decrees. In every case the Court held that money decrees, like judgments at law, bore interest at the rate of *six per cent. per annum*, from their date.

2. In Illinois there is no distinction as to interest, between money decrees made in suits of foreclosure, &c. where the parties had stipulated for interest, and

money decrees in cases arising out of *torts*, such as alimony, &c.

Becker v. *Becker*, 79 Ill. 532.
Dinet v. *Eigenmann*, 80 *id.* 274.

3. Interest must be collected from the date of the decree, whether it be so expressed therein or not.

Stats. of Ill. *supra*, Chap. 77, entitled "*Judgments, Decrees and Executions*," Sec. 7.
White v. *Haffaker*, 27 Ill. p. 351.

(1) Where, by operation of law, the decree draws interest, the officer must collect it; and, on application, the Court can, if necessary, force him to do so.

(2) In New York, and perhaps in other States, the statute gave interest on judgments rendered on contracts, but not on those rendered for *torts;* while in Illinois, the statute gives interest upon *all* judgments, and directs that an indorsement or order, directing the collection of interest, shall be made upon the execution when issued.

Stats. of Ill. *supra*, Chap. 77, entitled "*Judgments, Decrees and Executions;*" Sec. 7, *post* p. 5.
White v. *Haffaker*, *ubi sup.*
Ryckman v. *Parkins*, 5 Paige, 543.

4. The statutes above cited, or such parts thereof as are considered pertinent, are now set forth as follows: the italics being here inserted for convenience:—

The material parts of SECS. 44, 47 and 49, Chap. 22, entitled CHANCERY, in force as revised, from July 1, 1872, are in these words:

"§ 44. A decree for money shall be a lien on the "lands and tenements of the party against whom it is "entered, to the same extent and under the same limita- "tions as a judgment at law."

This section has been in force in substantially the same words from 1833. Gale's Stat. 1839, p. 144, Sec. 22.

"§ 47. When there shall be no direction that a mas-
" ter in chancery or commissioner execute a decree, the
" same may be carried into effect by execution, or other
" final process, according to the nature of the case, di-
" rected to the sheriff or proper officer of the county;
" which, when issued, shall be executed and returned by
" the sheriff or other officer to whom it may be directed,
" *and shall have the same operation and force as similar writs*
" *issued upon a judgment at law.*"

* * * * * * *

The substance of this section, so far as it is here material, has been in force from 1833. Gale's Stat. 1839, p. 144, Sec. 22.

" § 49. Whenever *an execution* shall have been issued
" against the property of a defendant, *on a judgment at law*
" *or in equity*, and shall have been returned unsatisfied, in
" whole or in part, the party suing out such execution
" may file a bill in chancery against such defendant, and
" any other person, to compel the discovery of any prop-
" erty or thing in action," &c. * * *

" The Court shall have power to compel such discov-
" ery, and to prevent such transfer, payment or delivery,
" and to decree satisfaction of the sum remaining due
" *on such judgments*, out of any personal property, money
" or things in action, belonging to the defendant," &c.,
&c.

The substance of this Section, so far as it is here material, has been in force from 1839 (Laws 1839, p. 50).

SEC. 7 of Chap. 77, entitled "Judgments, Decrees and Executions," in force as revised from July 1, 1872, is in these words:

" § 7. Every execution issued upon a judgment shall
" direct the collection of interest thereon, from the date
" of the recovery of the judgment until the same is paid,
" at the rate of six per centum per annum."

This Section is a revision of Sec. 4 of Act of 1825. Gale's Stat. 1839, p. 389.

SEC. 3 of Chap. 74, entitled "Interest" in force, as revised from July 1, 1874, is in these words:

money decrees in cases arising out of *torts*, such as alimony, &c.

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" at the rate of six per centum per annum."

This Section is a revision of Sec. 4 of Act of 1825. Gale's Stat. 1839, p. 389.

SEC. 3 of Chap. 74, entitled "Interest" in force, as revised from July 1, 1874, is in these words:

"§ 3. Judgment recovered before any Court or "magistrate shall draw interest at the rate of six per "centum per annum from the date of the same until "satisfied. When judgment is entered upon any award, "report or verdict, interest shall be computed at the "rate aforesaid, from the time when made or rendered "to the time of rendering judgment upon the same, and "made a part of the judgment."

That portion of this section here material has been in force from 1819. Gale's Stat. p. 343, Sec. 3.

II.

THE JUDGMENT OF THE COURT BELOW WAS IN ACCORDANCE WITH THE JUDGMENT OF AFFIRMANCE AND MANDATE OF THIS COURT.

1. Under the mandate of this Court, the Circuit Court was required to order an execution, containing a direction to the Marshal to collect interest from the date of the original decree, and in effect did so.

Mandate, Rec. p. 2.
23d Rule of the Court.
Rev. Stat. Secs. 1010, 1012.
West Wisconsin R'y Co. v. *Foley*, 94 U. S. 100.
Perkins v. *Fourniquet*, 14 How. 328.
The Lucille, 15 Wall. 676.
1 Stat. p. 85 Sec. 23, Judiciary Act, 1789.
Ibid. Sec. 22.
Wiscart v. *Dauchy*, 3 Dall. 321, 327.
2 Stat. p. 244, Sec. 2.
Rules 17, 18, 1 Cranch, xviii.
Rule 62, 13 How. v.
Rule 23, 21 *Id.* xii.
Rule 23, 11 Wall. x.

III.

THE APPEAL IN THIS CASE IS FRIVOLOUS, VEXATIOUS AND OPPRESSIVE, AND ENTITLES THE APPELLEE TO DAMAGES UNDER THE RULES OF THIS COURT.

Mandate, &c. Rec. p. 2–3.
Rule 23.
Perkins v. *Fourniquet*, 14 How. 328.
Wiser v. *Blachly*, 2 Johns. Ch. 488.
Whitney v. *Cook*, 99 U. S. 607.
Armory v. *Armory*, 91 *id.* 356.
West Wisconsin R'y Co. v. *Foley*, 94 *id.* 100.

1. In *Perkins* v. *Fourniquet*, the appellant paid all of the judgment included in the affirmance, and appealed against the interest alone. The appellant here could have done the like.

2. On a motion to dismiss, at the October Term, 1877, the statutes and the judicial decisions of Illinois on the subject of interest, were referred to. But the appellant, in an opposing brief, then declined to discuss the question of interest, although it might have consented to do so under the 20th Rule.

ARGUMENT.

Cases number 250 and 251 involve precisely the same point which arises in the same manner in each case. In 1874, money decrees against the appellants were rendered in the Court below. Appeals were then taken to this Court, and in April, 1877, it was in each case "ordered, "adjudged and decreed by this Court that the decree of "the said Circuit Court in this cause be, and the same is "hereby, affirmed with costs and interest until paid, at "the same rate per annum that similar decrees bear in "the Courts of the State of Illinois."

And the Circuit Court was further directed to execute the decree of this Court accordingly.

Under this mandate the Circuit Court directed execution to issue in both cases for the amount of the decree, with interest thereon from its date. The Court in its final order declared that under the law of Illinois, and under the mandate of this Court, the complainant was entitled to interest on these decrees from their date. To that opinion the defendants excepted and prayed the present appeals, which were then allowed.

Under the mandate the sole question is: Whether similar decrees bore interest in the Courts of the State of Illinois, when the decree of affirmance was rendered in these cases?

This is a question which must be determined by the judicial decisions of that State, so far as they bear upon the point, and to these, references will now be made.

In *Aldrich* v. *Sharp*, 3 Scam. 261, determined by the Supreme Court of Illinois, at the December Term, 1841, it appears a mortgage had been given to secure $450, with interest at *twelve* per cent. per annum; the statutory rate in the absence of an agreement, was but *six per cent.*; the lower Court had decreed payment of the principal,

together with interest at the rate of twelve per cent. (the contract rate), from the date of the mortgage until the payment of the decree. To reverse this decree a writ of error (of the same effect in Illinois as the ordinary appeal in equity cases) was prosecuted. The first error considered by the Court, questioned the correctness of the decree in relation to interest. On that subject the Court say:

"Where a judgment is obtained on a contract, the "contract is at an end, being merged in the judg- "ment, and the judgment is controlled, not by the con- "tract, but by the statute, which gives interest only at "the rate of *six per centum per annum*. We see no reason "why the rule should not be applicable to decrees in "chancery for the foreclosure of mortgages," &c. And the Court conclude the opinion by reversing the decree, and declaring that the "cause is remanded *for further* "*proceedings conformable to this opinion.*"

Warren v. *McCarthy*, 25 Ill. 95, determined in 1860, was an action of *debt* on the decree of a foreign court. The declaration omitted an averment of the rate of interest allowed by the laws of the State in which the decree was rendered. In the lower court evidence of the rate of interest on decrees from their date in the foreign State was introduced, and was at the same rate allowed by the laws of Illinois. In the Supreme Court, the question was, whether, in view of the pleadings, there had been error in the allowance of interest. On this question the Supreme Court say:

"The practice in this State is believed to be uniform, to "allow interest on decrees rendered in this State, and yet "they are not named by the statute. And this court has "held that decrees rendered in this State are governed by "the interest laws, like judgments at law. *Aldrich* v. "*Sharp*, 3 Scam. 261. We are therefore of the opinion "that to entitle a recovery on a decree of a sister State, an

"averment in the declaration, that interest is allowed by "the laws of the State in which it is rendered, is unneces- "sary."

In *White* v. *Haffaker*, 27 Ill. 349, determined in 1862, the decree ascertained the balance due, and directed interest on the decree at the rate of *ten per cent.* per annum to the day of sale. The Court in reversing this decree thus state the case:

"The record in this case presents the question, *whether* "*a decree may draw a greater rate than six per cent. interest?*

And on this subject the Court say:

"On the hearing it is proper that the Court should as- "certain the sum due upon the note, and decree its pay- "ment, *leaving the law to regulate the interest*, or, at most, "decree no more than six per cent. Otherwise, the "Court would have the right to deprive the complainant "of all interest on the decree which is given to him by the "law. *The statute* only having allowed *judgments and de-* "*crees* to draw six per cent., it was error in the Court be- "low to decree that the sum found should draw *ten per* "*cent.*"

The Court, instead of remanding the cause, itself entered a decree accordingly. They say: "But a decree "will be entered in this Court for the sum found to be "due, to draw *six per cent. interest.*"

In *Hunter* v. *Hatch*, 45 Ill. 178, determined in 1867, the Court say:

"This decree must be reversed, because by its terms "appellant is required to pay *ten per cent.* interest on the "sum found by the decree to the appellee, from the "date of its rendition till the money shall be paid. "*Pearsons* v. *Hamilton*, 1 Scam. 415; *White* v. *Haffaker*, "27 Ill. 349. The rule is so firmly fixed by these cases, "that a decree can only bear *six per cent.* under our law, "that we regard it wholly unnecessary to again discuss "the question, and shall content ourselves by reversing

" the decree because it is violative of the rule distinctly " announced in those cases."

After this pointed language of the Supreme Court of Illinois, no question in regard to interest on decrees seems to have been brought before that court for nearly eight years—not until the cases of *Becker* v. *Becker*, 79 Ill. 532; *Dinet* v. *Eigenmann*, 80 *id.* 274; and *Haas* v. *Chi. Bldg. Society*, *Ibid.* 248; in which the opinions were promulgated in the printed volumes of the Reports, in June 1877, and before the appeals were prayed in the cases at bar.

Becker v. *Becker* and *Dinet* v. *Eigenmann* were cases in equity for divorce and *alimony*. In each case the lower court entered a decree for alimony, and directed that after a certain date the decrees should bear interest at the rate of *ten per cent. per annum*. In both cases the Supreme Court itself modified the decrees of the court below, directing that they should draw but *six per cent.* from the time fixed by the decrees.

It was suggested by the appellant's counsel, in the court below, that the Illinois cases, giving interest on decrees, extend only to cases of contract, where either the law or the parties had previously made a rate of interest for the transaction; and that the rule thus established did not extend to the case of decrees for *torts* or where the original transaction did not, either by law or by a contract between the parties, draw interest. The cases of *Becker* v. *Becker*, and *Dinet* v. *Eigenmann*, *supra*, decreeing alimony, and decided before these appeals were taken, overthrow this assumption, and show that no such distinction has ever been recognized by the courts of the State of Illinois.

In *Haas* v. *Chicago Bld'g Society*, 80 Ill. 248, the Supreme Court reversed and itself modified the decree of the Court below, in the same manner as in the cases of *Becker* v. *Becker* and *Dinet* v. *Eigenmann*, *supra*.

These uniform and unvarying judgments of the highest Court of the State, covering a period of nearly forty years, ought to settle the question whether decrees, under the laws of Illinois, bear interest, and at what rate.

Nor can the suggestion that decrees *eo nomine* are not mentioned in the statutes of Illinois in connection with its interest laws, diminish the force of these judicial determinations.

On the other hand, by section 49, Chap. 22 of the Illinois Statutes, *ubi sup.*, regulating the practice in chancery, in force ever since 1839, the term *judgment* is applied to money decrees of courts of equity as well as to judgments of courts of law. The language of this section in that connection is this: "Whenever *an execution* shall "have been issued against the property of a defendant, "*on a judgment at law* or *in equity*" &c.; and again; "the "court shall have power * * to decree satisfaction of "the sum remaining due *on such judgments*," &c.

These appeals are not only frivolous but unnecessarily oppressive.

That they are frivolous clearly appears from the statutes of Illinois and the adjudged cases already referred to. In July, 1874, when these decrees were first rendered by the Circuit Court, all of the statutes to which reference has been made were in force in that state, in a new revision of its laws, the latest of which took effect July 1 of that year. And, when the appeals were taken, all of the judicial decisions to which reference has been made, had been officially promulgated.

That the appeals are unduly oppressive and vexatious is apparent, because the interest question was severable from the amount of the original judgments which had been affirmed. The defendants could have performed the decrees thus affirmed, by paying what they were bound to admit was due, and could have taken their ap-

peal as to the residue or interest, which was the subject of the new order of the Circuit Court. Such was the course pursued in *Perkins* v. *Fourniquet, supra.*

It is admitted that the appellants were not obliged by any rule of law to pursue the course thus indicated, but still it was in their power to do so. Where their ground of appeal is so slender, therefore, as it appears to be in these cases, they ought to be held responsible for the oppressiveness of the course which they chose to adopt.

Again, it was in the power of the appellants to have met the interest question on the merits, even, under the motion to dismiss made in 1877. Here, again, it may be observed, the appellants were not bound by any rule of law thus to meet the question, or submit it upon printed argument. But their failure to do so is a circumstance to be taken into account in connection with their other conduct, where a claim for damages is made upon them for vexatious delay.

Again, it appears from the records of this Court that in the last Term, the pendency of these cases here was made the occasion of vexatious and groundless motions for leave to file bills of review on the alleged ground of newly discovered evidence; and these, it is submitted, should be taken into account in applying the rule of this Court relating to damages in such cases.

FRANCIS H. KALES,

Of Counsel for the Appellee.